

# SANDLER, REIFF, YOUNG & LAMB, P.C.

September 27, 2012

Via E-Mail and First Class Mail

Jeff S. Jordan, Esq.  
Supervisory Attorney  
Federal Election Commission  
999 E Street, N.W.  
Washington D.C. 20463

Re: MUR 6611

Dear Mr. Jordan:

We serve as counsel for Margaret Rothschild and Progress for Washington, and are writing in response to the Commission's letter dated July 31, 2012 regarding MUR 6611 and enclosing a complaint from James R. Baum.

The complaint alleges that Margaret Rothschild, Progress for Washington ("PFW") and Friends of Laura Ruderman ("FLR"), the authorized campaign committee of Laura Ruderman for the 1st Congressional District of Washington, violated the Federal Election Campaign Act when PFW made public communications that were coordinated with FLR. As described in the enclosed declarations there were no communications, either directly or indirectly, between PFW and FLR about either committee's projects, needs or plans. Accordingly, there was no coordination or even an opportunity for coordination, and therefore, the complaint should be dismissed.

## BACKGROUND

Laura Ruderman was a candidate for the Democratic Party's nomination for the 1<sup>st</sup> Congressional District of Washington in the 2012 primary. She lost that election. FLR is her authorized committee.

Margaret Rothschild is Laura Ruderman's mother. Rothschild was the primary funding source for PFW.

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PFW is a political committee that only made independent expenditures in 2012 supporting Ruderman's campaign.

As described in the enclosed declarations, PFW engaged an independent pollster to provide information that formed the basis for its independent expenditure advertisements and no one associated with PFW consulted anyone at FLR about any of the advertisements by either committee. In addition, the pollster had not performed any work for the Ruderman campaign, nor did they consult with the Ruderman campaign.

Although Ms. Rothschild did appear in an advertisement with her daughter, her role in the advertisement consisted merely of being filmed walking with Ms. Ruderman. As Ms. Rothschild's declaration attests, she did not learn of any non-public information regarding FLR's projects, plans or needs in connection with her participation in this advertisement. Of course, her decision to contribute funds to a PAC for the purpose of running independent ads was in no way related to her participation in this advertisement.

Also as described in the declarations, all of the PFW staff, its consultants and Rothschild were aware of the necessity of not discussing the projects, plans and needs of PFW or FLR with anyone associated with FLR. Accordingly, no discussions were held except for Rothschild's normal family interactions with her daughter. However, Ms. Rothschild was aware of the necessity of not discussing campaign plans with each other or in the other's presence, and went out of her way to avoid any such discussions, as demonstrated by her declaration.

To be sure, as an illustration of the complete lack of coordination between the Ruderman Campaign and PFW, the Ruderman campaign went so far as to publicly denounce ads being run by PFW. See e.g. *Ruderman denounces attack ad paid by her mom*, Seattle Times, July 18, 2012, p. B6.

Accordingly, in addition to a declaration from Ms. Rothschild, also attached to this response are declarations from Martin Hamburger (media consultant who produced PFW's sole TV advertisement) Jeff Gumbinner (who was responsible for the preparation of all mailings disseminated by PFW), Lauren Spangler (the pollster who undertook all polling utilized by PFW for preparation of its communications) and Jeremy Pemble (Treasurer of PFW). Aside from Ms. Rothschild, these individuals were solely responsible for any polling and creation of communications on behalf of PFW. Each declaration attests to the fact that no communication disseminated by PFW was done in coordination with FLR or its agents.

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While the complaint is noteworthy for its speculation about discussions between Rothschild and Ruderman, the complaint offers no facts or evidence of those discussions. Indeed, its premise is that mothers and daughters would have talked about the campaign. However, as Rothschild's declaration makes clear, she was aware of the rules regarding independent only expenditure committees, and no such discussions took place. Mere conjecture cannot form the basis of a valid complaint filed with the Commission. See MUR 4960 (Hillary Clinton).

### DISCUSSION

Independent expenditures are defined at 2 U.S.C. § 431(17) and 11 CFR §§ 100.16 and 109.1-.23. In short, an expenditure is independent if there have been no communications about the candidate's projects, plans or needs between the person or committee making the expenditure and the candidate or persons associated with her campaign, nor has the communication been made at the request or suggestion of the candidate or their agents.

The declarations provide proof that PFW's expenditures were made independently of the Ruderman campaign.

Alternatively, the Commission determines if an expenditure was independent by examining whether the expenditure was coordinated as defined by the Commission's three prong coordination test described in 11 CFR § 109.21. Here, PFW's expenditures clearly do not meet the conduct prong of the coordination test in 11 CFR § 109.21(d)(1)-(6). To meet the conduct prong of coordination definition, the parties must have engaged in one of the following six activities: (1) the communication must have been created, produced or distributed at the request, suggestion, or assent of the candidate or her campaign, (2) the candidate or her campaign must have been involved materially in decisions regarding content, intended audience, means or mode of communication, (3) there must have been a material discussion about the communication between the independent expenditure committee and the candidate or her campaign, (4) the independent expenditure committee and the campaigned shared a common vendor, (5) the independent expenditure committee or its staff or consultants were paid by, directly or indirectly, an independent contractor of the candidate, and (6) the independent expenditure committee distributed campaign material originally produced by the candidate's campaign under circumstances indicating agreement or collaboration with the candidate or her campaign.

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Here, the enclosed declarations demonstrate that none of the six-part conduct test requirements exist, and the complaint provides no proof -- only speculation -- that there was coordination. First, the complaint does not allege a single specific discussion with Ruderman or the Ruderman campaign by Rothschild or anyone at PFW. Second and more important, the declarations make clear that everyone at PFW and Rothschild were aware of the need to avoid any discussion of the Ruderman's campaign's plans. The PFW staff and consultants avoided all discussions with everyone associated with the Ruderman campaign and planned PFW's advertisements solely on their own experience and PFW's polls. Even though Rothschild could not avoid seeing her daughter, she meticulously avoided any discussion of FLR's plans and PFW's plans. Furthermore, she did not participate in any substantive decisions regarding PFW's advertisements.

The Commission has relied on similar declarations or affidavits many times to dismiss coordination allegations at the reason to believe ("RTB") stage. Examples include, MUR 5774 First General Counsel's Report (relying on Gallagher affidavit); MUR 5743 First General Counsel's Report (relying on Cutler affidavit); MUR 5679 First General Counsel's Report (relying on Beaupre affidavit); MUR 6122 First General Counsel's Report (relying on Gallagher affidavit); MUR 6050 First General Counsel's Report (relying on affidavits of Crounse and Hoyt); MUR 6059 First General Counsel's Report (relying on Keating affidavit).

The Commission's dismissal of MUR 6277 is instructive. The complainant alleged coordination between a candidate and his campaign with the candidate's brother who financed an independent expenditure committee to support his brother's campaign. The General Counsel Recommended finding Reason To Believe that a violation had occurred based on (1) the similarity of the language in the advertisements issued by the campaign and the independent expenditure committee, (2) a paid consultant of the independent expenditure committee who had previously been a volunteer for the campaign was either a common vendor, or (3) and an agent for the committee. MUR 6277 Statement of Reasons at 4 summarizing the General Counsel's Report. The complaint also alleged coordination because the candidate and the prime funder and organizer of the independent expenditure committee are brothers and the brother had previously sent a fundraising letter on behalf of the campaign. *Id.* at 5 n.14. Three Commissioners rejected these allegations and voted to dismiss the complaint noting that, "The Commission's coordination regulations do not require heightened scrutiny to situations involving familial ties or other personal relationships." *Id.* The three Commissioners relied on the affidavits submitted by the brothers and others denying coordination. Although the General Counsel was suspicious of the affidavits because they contained general denials, the Commissioners found that the general denials were sufficient because "initiating an investigation on the basis that the affidavits contain general denials as to whether [the participants] had any involvement with the Committee's media strategy or the creation of its public communications would be especially inappropriate, since it would essentially shift the burden of proof to respondents." *Id.* at 10 (footnote omitted).

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Even if the General Counsel thought the facts in MUR 6277 were suspicious, there is no reason to be suspicious here. There is no allegation that PFW's language in its advertisements mimicked the campaigns. Indeed, the campaign publically disavowed and publically denouaced PFW advertisements. PFW's media consultants and treasurer were never involved in the campaign, and Ms. Rothschild, although she did engage in some public activity on behalf of her daughter's campaign, was never privy to any non-public information regarding the campaign's plans, projects or needs. Accordingly, if the facts in MUR 6277 were insufficient to find RTB coordination occurred, there are no facts – or allegations in the complaint to support an RTB finding here.

CONCLUSION

For the above reasons, the Margaret Rothschild and Progress for Washington request that the complaint be dismissed and the case closed.

Respectfully submitted,



Stephen E. Hershkowitz  
Neil P. Reiff

Counsel for Margaret Rothschild and  
Progress for Washington

Enclosed declarations: Margaret Rothschild  
Jeff Gumbinner  
Lauren Spangler  
Martin Hamburger

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